



School of Law  
The University of Montana  
Missoula, Montana 59812-6552  
Phone: (406) 243-4311  
FAX: (406) 243-2576  
www.umt.edu/law/

August 31, 2006

Senator Jim Shockley  
P.O. Box 200500  
Helena, MT 59620-4800

EXHIBIT 1

Re: Your letter of July 13, 2006

Dear Sen. Shockley:

I am writing to thank you for your remarks about the Public Defender Commission, and I also wanted to write to respond to several of your remarks and concerns. The first concern you raised was about the staffing of the Kalispell office. We conducted two days of public hearings about our strategic plan, and a significant portion of the discussion was centered on Kalispell. A number of the attorneys that had been providing contract services appeared and offered their input, and as did two of the District Judges, Judge Stadler and Judge Lympus. The judges were very much in favor of phasing in any new system. After hearing all the testimony, the Commission voted to give Randi Hood the authority to implement the system as she deemed best. Taking into account all the public comment, the attorneys available, and resources at hand, she set up the office in Kalispell and will gradually increase the staffing until the office is fully staffed.

A second concern you raised was about the management experience of some of the attorneys that have been placed in the Regional offices. In hiring for those positions Ms. Hood had two primary issues. First, there aren't a lot of experienced criminal defense attorneys in Montana that have management experience. Second, there weren't attorneys with management experience that applied for the positions. She made the decision to hire experienced criminal defense attorneys and to immediately begin providing them with management training. The Commission supports her in that decision, as we believe our Regional deputies must first be good criminal defense attorneys in order to understand and carry out our mission. Having personally been in the position of being a solo practitioner and also of running a public defender office, I am comfortable with her decisions. If problems develop we are confident that Randi will act decisively to keep the system working properly.

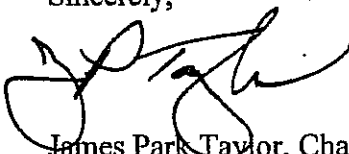
Another concern you raised is about how conflicts are being handled. I wanted to explain to you the system we have adopted and how it is being implemented. We had extensive discussions about conflicts and how they would be handled. We examined the systems used by other states, and examined several options.

- We could have set up the system so that all the offices operated completely independently. The advantage of this system is that we would have to send fewer cases out because of conflicts of interest. The downside of that choice would be that the Regional deputies have less supervisory authority to enforce the Standards.
- We could have set up the system so that the entire State was one firm for purposes of conflicts of interest. The advantage of this system is that it maximizes the amount of supervisory authority the Regional attorneys have. The downside is that it also increases the number of cases that would have to be sent out because of conflicts of interest.
- Ultimately, we choose a third alternative. We decided that each of the eleven Regions would be a separate law firm for purposes of conflicts of interest. An attorney from a public defender office in Region 1 can therefore handle a conflict in Region 2, assuming that it is economically feasible. We continue to study the issue of conflicts of interest and the financial costs associated with them. We need more hard data on total caseloads and numbers of conflicts to assess how the system is working, and that will only come with time.

Finally, your letter indicates that you are considering introducing legislation to change the makeup of the Commission as it is presently constituted, adding two legislative members, one from the House and one from the Senate. The makeup of the Commission is a matter of legislative prerogative, however, I wanted to give you my thoughts on the subject. When the Legislature created the new public defender system, it patterned the system on the American Bar Association's "Ten Principles of a Public Defense Delivery System." The first of those principles is that the public defense function is independent of political and judicial influence. As you know, both the Legislature and the Governor already decide who is appointed to the Commission. As a public Commission we are accountable to the Legislature as a whole, and directly to the Law and Justice Interim Committee and to the Legislative Finance Committee. The Public Defender Commission has been functioning as a group for just over a year, and I think that we have made good progress in furthering the goals established by the Legislature. We welcome input from your Committee, and are working to improve our communication between the two groups.

I encourage you to give us a chance to do our job as an independent body. If we fail to meet our statutory mandates, then changes may have to be made. Based on what we have accomplished thus far, however, I hope that we are given the chance to continue our work. I look forward to continued dialogue with the Committee, and working with you during the upcoming legislative session.

Sincerely,



James Park Taylor, Chairman  
Public Defender Commission

cc: Law and Justice Interim Committee  
Legislative Finance Committee